



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17513984

DATE: JUNE 30, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a product engineering and consulting business, seeks to employ the Beneficiary as a quality assurance engineer. It requests advanced degree professional classification for the Beneficiary under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition on the ground that the evidence of record did not establish that the Beneficiary has the requisite experience to qualify for the proffered position under the terms of the labor certification. The Director also denied the Petitioner’s request to change the visa classification sought in this proceeding to skilled worker, indicating that a petitioner cannot make a material change after filing to make a deficient petition conform to the requirements for approval.

On appeal the Petitioner submits a brief and copies of previously submitted documentation. The Petitioner asserts that the evidence establishes that the Beneficiary has the requisite education and experience to qualify for the proffered position under the terms of the labor certification and for the requested classification of advanced degree professional.

In visa petition proceedings it is the Petitioner’s burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

The term “advanced degree” is defined in the regulation at 8 C.F.R. § 204.5(k)(2) as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.

The regulations at 8 C.F.R. § 204.5(k)(3)(i) state that a petition for an advanced degree professional must be accompanied by either:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, a beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition’s priority date,¹ which in this case is February 7, 2020. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

II. ANALYSIS

The labor certification in this case specifies the following in section H (Job Opportunity Information) regarding the requirements for the position of quality assurance engineer:

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|-------|---|--|
| 4. | Education: Minimum level required: | Bachelor’s degree |
| 4-A. | Major field of study | Computer Science, CIS, Engineering (any) |
| 5. | Is training required for the job? | No |
| 6. | Is experience in the job offered required? | Yes |
| 6-A. | How long? | 60 months |
| 7. | Is an alternate field of study acceptable? | Yes |
| 7-A. | What field(s)? | Computer Applications, MIS, or any related field |
| 8. | Is an alternate combination of education and experience acceptable? | No |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | Yes |
| 10-A. | How long? | 60 months |
| 10-B. | What job title(s)? | Same or similar job duties but given another designation |

¹ The priority date of an employment-based immigrant petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d).

14. Specific skills or other requirements:
Must be able to travel/relocate to various client sites throughout the USA

Thus, the minimum educational and experience requirements of the labor certification to qualify for the proffered position are:

- a U.S. bachelor's or foreign equivalent degree in computer science, or CIS (computer information systems), or engineering, or computer applications, or MIS (management information systems), or a related field, plus
- five years of post-baccalaureate experience as a quality assurance engineer or in another position with similar job duties.

According to the labor certification (sections J and K), the Beneficiary met the above requirements by virtue of a master's degree in computer science from [redacted] University in [redacted] India, completed in 2013, and nearly ten years of experience as a "senior engineer – quality engineering" with [redacted] in [redacted] India [redacted] from August 2005 to March 2015.²

The record includes copies of two sets of academic records showing that the Beneficiary earned (1) a Diploma in Civil Engineering from the State Board of Technical Education and Training in [redacted] [redacted] India, on October 31, 1992, following completion of a three-year "Diploma Course of Study" at [redacted]; and (2) a Master of Science in Computer Science from [redacted] University in India on December 24, 2013, following completion of a two-year degree program.

As evidence of the Beneficiary's experience prior to his employment with the Petitioner, the record includes two letters from [redacted] in 2020. The first letter stated that the Beneficiary was employed as a "Senior Engineer – Quality Engineering" from August 2005 to March 2015, and described his job duties. The second letter stated that the Beneficiary was employed as a consultant from August 2000 to July 2005 (a job not listed on the labor certification), and described his duties in that position.

The record also includes two academic equivalency evaluations from Universal Evaluations and Consulting, Inc. (Universal). The first evaluation asserts that the Beneficiary's diploma in civil engineering followed by his master's degree in computer science amounts to the educational equivalent of a bachelor of science in computer science from an accredited U.S. college or university. The evaluation makes no mention of the Beneficiary's experience. The second evaluation, from the same author, asserts that the Beneficiary's three-year diploma in civil engineering was equivalent to one year of university-level credit from an accredited U.S. college or university, and that this education

² Section K also lists the Beneficiary's current employment with the Petitioner, where he began working as a quality assurance engineer in March 2015. That work is not qualifying experience, however, since the labor certification indicates at section J.21 that the Beneficiary did not gain any qualifying experience with the employer in a substantially comparable position to the job opportunity in this proceeding.

combined with the Beneficiary's 14.7 years of experience and training with [redacted] from August 2000 through March 2015 is equivalent to a bachelor's degree in computer information systems from an accredited college or university in the United States.

The Universal evaluations do not establish that the Beneficiary has the requisite combination of education (at minimum a bachelor's degree) and experience (five years of post-baccalaureate experience in the specialty) to qualify for the proffered position under the terms of the labor certification or to qualify for classification as an advanced degree professional.

With respect to the first evaluation, even if we accept Universal's assertion that the Beneficiary's master's degree in computer science from [redacted] University is equivalent to a U.S. baccalaureate degree, and thus satisfies the minimum educational requirement of the labor certification and advanced degree professional classification, the Beneficiary does not have five years of qualifying post-baccalaureate experience, for the purpose of advanced degree professional classification, because the time frame between the award of his degree in late December 2013 and the start of his employment with the Petitioner at the end of March 2015 was little more than a year and a quarter. As explained in footnote 2, the Beneficiary's work with the Petitioner after March 2015 is non-qualifying experience. Furthermore, none of the Beneficiary's experience with [redacted] that predated the Beneficiary's baccalaureate level degree is qualifying experience, for the purpose of advanced degree professional classification, because it was not "post-baccalaureate" experience as required by 8 C.F.R. § 204.5(k)(3)(i)(B).

The second Universal evaluation acknowledges that the Beneficiary's diploma in civil engineering is not a baccalaureate or foreign equivalent degree, instead asserting that the three-year program was comparable to one year of university study in the United States. The record does not indicate that either the State Board of Technical Education and Training which awarded the diploma, or [redacted] where the Beneficiary studied, is a degree-granting institution. Moreover, the Beneficiary's diploma specifically identified the program he completed as a "Diploma Course of Study," not a course of study leading to a baccalaureate level degree. Therefore, the Beneficiary's diploma does not satisfy the minimum educational requirement of the labor certification and advanced degree professional classification. Furthermore, since the diploma in civil engineering is not a baccalaureate or foreign equivalent degree, none of the Beneficiary's subsequent work with [redacted] [redacted] was qualifying experience, for the purpose of advanced degree professional classification, because it was not "post-baccalaureate" experience as required by 8 C.F.R. § 204.5(k)(3)(i)(B).

Evaluations of academic credentials by evaluation services or individual experts are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, we conclude that the [redacted] evaluations have little probative value in this proceeding. They do not establish that the Beneficiary has the requisite education and experience to meet the terms of the labor certification and qualify the Beneficiary for classification as an advanced degree professional.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the requisite combination of education and experience, as specified on the labor certification, to qualify for the proffered position and for the requested classification of advanced degree professional. In particular, the Petitioner has not established that the Beneficiary has at least a baccalaureate level degree in a field of study identified on the labor certification plus five years of qualifying post-baccalaureate experience by the priority date of February 7, 2020. Therefore, the Beneficiary does not qualify for the proffered position under the terms of the labor certification and does not qualify for advanced degree professional classification in accordance with the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B). The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.